

REMARKS

Applicant respectfully requests reconsideration. Claims 1-35 were previously pending in this application. By this amendment, Applicant is canceling non-elected claims 18-29 without prejudice or disclaimer. Applicant reserves the right to file one or more divisional or continuation applications directed to the rejected claims and/or any other canceled subject matter. No claims have been amended. New claims 36-39 have been added. As a result, claims 1-17, and 30-39 are pending for examination with claims 1, 17, 35, and 36 being independent claims. No new matter has been added.

Rejections Under 35 U.S.C. §102

Claims 1-17 and 30-35 stand rejected under 35 U.S.C. §102(b) as being anticipated by Welch et al. (U.S. Patent No. 6,874,650). Applicant respectfully traverses this rejection. As discussed below, Applicant believes that independent claims 1, 17 and 35 distinguish over Welch under both §102(b) and (e).

Due to the brevity of the Office Action, Applicant made several assumptions to reach the Examiner's presumed rationale for the above rejection. Applicant kindly requests that if any of these assumptions of the Examiner's position are incorrect or inadequate that the Examiner provide a more detailed explanation in a second non-final Office Action.

Welch is directed to stackable storage containers. The sidewalls of the containers includes indentations 22a, 28a on the sidewalls to provide additional stiffness. The upper end of the indentations on the sidewalls may include recesses 30 which form handle grips to enable a person to easily pick up the container. Welch also defines outwardly tapered stress-relieving corner surfaces 50 at the bottom of the container. (Welch, Col 3, lines 19-24, and 41-48).

Independent claim 1 is directed to a nestable container having four sidewalls flared upwardly and outwardly from a common bottom, with each sidewall connected to an adjacent sidewall by an inwardly fluted web defining thumb and finger gripping corners at the edges of said sidewalls.

In the Office Action, the Examiner states that all of the pending claims are anticipated by Welch and then refers to FIGS. 1, 5 and 6. However, Applicant believes that Welch does not teach or suggest all of the limitations recited in independent claim 1. In particular, Welch does not teach or suggest a nestable container with each sidewall *connected to an adjacent sidewall by*

an inwardly fluted web defining thumb and finger gripping corners at the edges of said sidewalls, as recited in independent claim 1.

Applicant presumes that the Examiner is looking at the indentations 22a, 28a shown in Welch and is perhaps comparing these indentations to the claimed inwardly fluted web. However, even if one were to assume that these indentations are analogous to an inwardly fluted web, the indentations do not connect adjacent sidewalls to define thumb and finger gripping corners at the edges of the sidewalls of the Welch container. In contrast, these indentations are positioned in the middle of each sidewall of the Welch container, and there is no teaching or suggestion of these indentations connecting adjacent sidewalls to define gripping corners.

Applicant also considered whether the Examiner could be taking the position that the outwardly tapered stress-relieving corner surface 50 shown near the bottom wall 20 of the Welch container could be analogous to the claimed inwardly fluted web. However, as defined in the specification on the bottom of page 9 through the top of page 10, these inwardly extending flute or gripping grooves are bowed inwardly along a suitable radius. In contrast, these corner surfaces 50 are substantially planar triangular surfaces, and thus do not form inwardly fluted webs, as recited in independent claim 1.

Therefore, regardless of whether the Examiner is looking at the indentations or the corner surfaces of Welch, Welch does not teach or suggest all of the limitations of claim 1. Thus, the rejections of claim 1 as anticipated by Welch should be withdrawn. Claims 2-16 depend from claim 1 and are patentable for at least the same reasons.

Independent claims 17 and 35 are both directed to a nestable container having a frusto conic shaped sidewall with inwardly fluted webs. As discussed above, in making the rejection of these claims, the Examiner simply refers to FIGS. 1, 5 and 6 in Welch. However, Applicant believes that Welch does not teach or suggest a container with a *frusto conic shaped sidewall*, as recited in independent claims 17 and 35. In the present application, frusto conic shaped containers are discussed at the top of page 5 and 13, and are given exemplary reference numbers, 15 and 17, as illustrated in FIG. 1. There is no teaching or suggestion in Welch of frusto conic shaped containers. Thus, the rejections of claim 17 and 35 as anticipated by Welch should also be withdrawn. Claims 30-34 depend from claim 17 and are patentable for at least the same reasons.

New Claims

Applicant has added new claims 36-40, including independent claim 36 to further define aspects of the invention. Support for the new claims may be found at least from the bottom of page 9 to middle of page 11, and also in FIGS. 1 and 2.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By:

David Wolf, Reg. No. 17,528
Shannon Pratt, Reg. No. 55,548
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Docket No.: P0740.70001US00
Date: February 16, 2006
x02/17/06x